

Richmond Public Interest Law Review

Volume 22 | Issue 2

Article 5

4-23-2019

2018 SYMPOSIUM LECTURE: WORKING WITH VICTIMS IN THE ERA OF #METOO

Megan Zwisohn

Follow this and additional works at: <https://scholarship.richmond.edu/pilr>

Part of the [Public Law and Legal Theory Commons](#)

Recommended Citation

Megan Zwisohn, *2018 SYMPOSIUM LECTURE: WORKING WITH VICTIMS IN THE ERA OF #METOO*, 22 RICH. PUB. INT. L. REV. 193 (2019).

Available at: <https://scholarship.richmond.edu/pilr/vol22/iss2/5>

This Article is brought to you for free and open access by the Law School Journals at UR Scholarship Repository. It has been accepted for inclusion in Richmond Public Interest Law Review by an authorized editor of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

2018 SYMPOSIUM LECTURE: WORKING WITH VICTIMS IN THE ERA OF #METOO

*Megan Zwisohn**

* Ms. Megan Zwisohn is a Deputy Commonwealth's Attorney in Gloucester County, Virginia. Ms. Zwisohn graduated magna cum laude with a Bachelor of Science degree in Criminal Justice from Old Dominion University and she received her Juris Doctorate from Albany Law School, having spent her third year studying with the T.C. Williams School of Law here at the University of Richmond. Ms. Zwisohn has been an instructor in Old Dominion's Criminal Justice Department and has been an adjunct at William and Mary Law School since 2013. Ms. Zwisohn began her career as a prosecutor in 1997 in the Virginia Beach Commonwealth's Attorney Office. She then worked for the Norfolk Commonwealth's Attorney Office as a Deputy Commonwealth's Attorney, until joining the Gloucester County Commonwealth's Attorney Office in 2012 as the Deputy. Ms. Zwisohn has also served as a faculty for the Commonwealth's Attorney Service Council's Trial Advocacy Course since 2004. She's also been called on to lecture and train prosecutors and law enforcement officers on a variety of topics. She's currently a co-chair of the Executive Advisory Council for "Teens with a Purpose," an organization dedicated to supporting teens in need through the arts and encouraging community leadership. She also serves on the Board of REACH, which stands for "Reading Enriches All Children," and has volunteered as a shelter reader.

LECTURE

First, I appreciate as a prosecutor being invited to be a part of this type of symposium. We often get left out of these discussions. I don't think anybody realizes the amount of work that we do with trauma victims and that we have been doing for years, especially with sexual assault. Not so much harassment - that's going to be more Sharyn's end - but with sexual assault victims. So, the title of this, obviously, is "Interviewing Victims in the #MeToo Era," but I will tell you I could have given this lecture twenty years ago when I first started - the exact same lecture. The #MeToo Movement, as has already been discussed by both Sharyn and Lesley, is the bottom start. It is a conversation starter that we have needed to have. It does not mean that this stuff hasn't been around for generations. It just means that a lot of people who normally would not have been willing to talk about it do talk about it, and a lot of people who had no idea it was going on are now learning that it's going on.

So, I wanted to preface it with this...How many people here have been or know someone who has been a victim of some sort of sexual violence or sexual harassment? That's my point. And there is somebody from just about every generation - except for young ones - in this room, alright? We all have some sort of story to tell. So that's the first thing that you have to remember when you're working with trauma victims is that they're not the only one. You're not the only one, but we are all individuals and we all have our own story. So, one of the first things you need to do is be your own client. You need to figure out your own...I'm a swearer so I'll try to say "stuff." My law students love it when I swear in class. It's really cool but in this group, I'll try to be nice...and I do have to say I haven't been back in this building for twenty-three years, and it's just kind of weird to be here...But you've got to figure out your own stuff first, because what we do - even as victims - is we judge other victimization as if it's ours, or we didn't react that way, or we should have done something, or we project onto them. And so, you've got to clean yourself up.

So I came to prosecution because of what happened to other people. My best friend growing up was in a family with domestic violence. She was sexually abused by a grandfather, but then her step-father physically abused her grandmother. We were in fifth grade, and I would stay up with her all night to talk to her while the abuse was happening so she wouldn't have to listen to it. And my own parents were sometimes asking, "why are you always staying over there? Why don't you invite your friend over here?" She wasn't allowed to go out, so I felt it was my job. So early on I garnered the personality of protector, alright? And I had my own stuff going on. During

the discussion with #MeToo my mom called to ask, “how are you doing with all this and the Kavanaugh hearing? How are you doing?” Because she knew some things that had happened to me, and I said “I’m fine, but thank you for checking in.” Because we all have something or we know someone. In terms of the discussion, I can’t tell you - and women you may notice this more - men, you’ve been taking it in if it hasn’t been part of your world already. When a group of women get together and start just talking about it and there’s a male in the room and an open minded male, the reaction I often see is “I had no idea.” And that’s when they say, “I didn’t know this was such a regular event,” and then they start to see the psychology of why women don’t speak up often because it can be part of our lives. It’s just part of being a woman, right? Going through middle school getting your butt slapped was just part of my teenage years, right? It wasn’t something we thought immediately needed to be dealt with. But because the chances are that something happened to you or you care about something that has happened to. You need to figure these things out before you start working with trauma victims. You need to address your own personal traumas.

Questions. What questions have you asked yourself? Because your victims are going to have been asking themselves those same questions. You’re going to want to know how you felt judged because that’s how they felt judged. And you’re not going to want to put that judgment on them. And, oftentimes, we’re actually individually judging ourselves and that kind of helps. You want to think about who helped you most through that traumatic event: who helped you and how they helped you. Because, again, that helps you understand more. This helps you sort of self-counsel. When you reach that point where you then have a rational conversation with yourself, this helps you self-counsel as to how did I process this. Am I really okay now? What is happening?

And who made you feel worse? If you did disclose to somebody, who made you feel worse about it? How did they make you feel worse about it? Because oftentimes, people can be well meaning but they still make you feel worse. That initial question that we ask of women half of the time: “Well, were you alone? How much had you had to drink? I don’t think it’s your fault - you know there’s nothing wrong, you should be allowed to go out and have a drink, but had you been drinking? How had you planned to get home?” Those kinds of things. Who made you feel worse about it? And craft how you’re going to handle your interaction with victims not that way. This is something we all have to keep in mind.

You cannot help other people unless you face yourself. I believe strongly in that. I’ve been doing this for twenty-two years. I watch young prosecutors, young attorneys who want to be in charge because they have an agenda

of something. And while that's great to some extent, that agenda, when it's a personal agenda, will kill your career because you make decisions that are based on your personal agenda and your personal decisions based on what justice is, or in the civil world what the actual best outcome would be, whether that's settlement or trial. This is the risk you run. I've seen these things happen too. Being judgmental of the victim's reactions, forcing the outcome on your victim that you wanted: "No one came forward when I was assaulted. No one believed me when I was assaulted, or when I was sexually harassed. So I think that you need to get out there because we need to get this guy, because I didn't get justice." We say that to a lot of people who are doing this and we even do this especially with corporate stuff. You've got to think about the other people. That is something we have to deal with on a regular basis: that balance between forcing someone to handle the agenda of society versus what's best for them.

And then you miss your own healthy, unhealthy reactions. If you don't deal with it. I'm going to talk about it and this is what vicarious trauma is. This is a very cursory overview, but if you are a trauma victim yourself or if you are exposed to it a couple different ways, when you get into a similar situation, you don't know that it's probably going to trigger you and that trigger then turns it on. There's a reason why I had a circle on that first slide because this is all very circular when you're working with trauma victims.

Preparing for the interview, it's like preparing for any job, so some of this is not going to sound like, "oh, I needed a professor to stand up here and tell me what to do." You need to be prepared for a couple of reasons. Sometimes that victim is going to come in and "*bhehhuhhhh*" - tell you everything right away, and if any of it is something so shocking and you didn't know about it because you didn't read the report or you didn't read the intake interview and you didn't read the memo from your partner, you don't want it on your face. You don't want to look like "shit, that happened to you." We have a young man in our office right now who cannot talk about women's body parts. It is just the hardest thing, and I'm sorry if you're going to deal with these things you have to learn to say vagina. You have to learn to say penis. You have to learn to talk about all the different things you can do with those things including the mouth.

So your interviewing a victim and she's telling you about what happened and your face is turning bright red because you're embarrassed. That's not going to work, so you've got to be prepared. You've got to read any reports or any information that you have available. You also have to be ready for any possible emotion, and this goes back to the slide about you can't be judgmental. You can't decide this is how someone should react after being harassed on the job for fifteen or twenty years versus this is how someone

2019]

WORKING WITH VICTIMS

197

should react after being raped by their mother or father, brother, stranger. Because everyone reacts differently, so people will come in for their first interview and they'll be angry and want blood. Some people are going to come in and they're going to be angry at you, especially if you go into the criminal realm.

I have a little girl who was sexually abused by her uncle. She hates my guts. I totally get it. Whenever she sees me she knows what it's about. She's ten years old. We had a preliminary hearing. She was crying, and it was awful. But when the defense attorney is asking her questions, she did great because she hadn't met the defense attorney before and didn't know what was going to happen. The defense attorney was not considered the person she had to think about all morning, telling the awful thing that had happened to her. You don't know how that's going to feel and how that's going to affect you, as well.

The number one emotion you're going to get a lot of the times that kind of throws everyone off is no emotion at all, especially those people who have dealt with institutional harassment or long-term family abuse or domestic violence abuse that's been going on long term. You're going to get a lot of no emotion. You're going to get a lot of quiet. You can't think because there's no emotion that they don't care - that they're really not interested in pursuing what it is you're meeting with them about. A lot of that is because that's how they protect themselves. Because if they start showing emotion, it is not going to stop. And why bother showing emotion because it's just going to happen again, and "I don't trust you because he or she has promised me over and over again that it's not going to happen again, so I'm just here. Tell me why I'm here." And they'll be that way a lot.

My students at the law school always laugh when we start doing client interviews and client counseling because I always say have tissues and water available. You have to make the room somewhat comfortable. There's nothing worse than when a victim is talking to you and they just start crying so much that the snot comes dripping out, and you're looking around like "tissues...get tissues." It's the little things. It's like when military has their go-bag. If you're going to deal with trauma victims, your go-bag should have water and tissues in it. You might not need it but chances are you will. If you're in a prosecutor's office work with a victim advocate who can reach out to the trauma victims before they even get to you. Consult with them. Take the time to find out, had they expressed any interest with what they want to talk about. Are they hesitant to come forward? Do they really know what they even want out of this? Sometimes they just want to tell their story. They're not out for blood. They just want someone to believe them. They just want someone to believe them. So familiarize yourself

with trauma center interviewing technique. It involves understanding that a lot of trauma victims can't tell you from point A to point B what happened. And if they get stuck, you can ask them things like "well, do you remember hearing anything?" "Do you remember any music?" "Do you remember smells?" Because the part of our brain that is functioning during trauma is not necessarily the part of the brain that is *really* taking in everything that's physically happening to them. It's that dissociation, so the brain goes to "what else is around?" So what was the color of the room? Do you remember that? Keep that in mind.

The other part of trauma centered interviewing techniques is recognizing that over time memories change. We make the mistake, especially in law enforcement, of thinking that closer to the time of the act the memory's going to be better. "It just happened so she should remember or he should remember exactly what happened." You've got to give them at least one to two sleep cycles because the memory gets better over time with trauma victims. The brain protects a trauma victim by making it all kind of go away. Except for the severe trauma that usually happens to the body - that they have to face. So you have to have some sleep cycles, you have to let them know it's okay if they didn't tell anything because as lawyers this is what we often do, "well you said something a little different last time, so that's an inconsistent statement which means you're not credible." Learn the difference between inconsistent and the addition of more details. As soon as an addition or more details come in, lawyers almost immediately go "that's inconsistent, you didn't say that the first time we met." It's not inconsistent; it's remembering more. It's adding to the story. It's maybe correcting a memory because memory can be really weird when someone has been traumatized.

If possible, and do this for yourself, don't schedule two victims in a row. You can't necessarily do that in a job where that's your whole job, but if you can, at least give yourself a few minutes break in between. Because that's part of the trauma that happens to attorneys when they deal with this, is you're taking everybody's stuff and you go from one victim to the next victim, you're going to walk home and the first thing you're going to - you wonder why we all drink? It's like "I need to just get a glass of wine." I just dealt with and listened to the worst things ever. So try give yourself a break in between if you're going to be doing a lot of victim interviewing. And schedule more time for these interviews than you would a normal interview. If you've got someone who's coming to talk about sexual harassment claim or a criminal claim, give yourself more time. For my kid interviews, my first time might only be ten minutes because I'm not going to force them to talk about anything. It's like "hey how are you doing? This is who I am,"

2019]

WORKING WITH VICTIMS

199

and we work it through. And then the next time we play Uno and then the next time, and then eventually talk to the child. But a lot of times your interviews are going to be longer because you're going to be pausing for crying probably. You're going to be trying to get information out; it's going to be quiet for a long time.

That's also part of the interviewing technique. We need to remember, and lawyers are horrible at this, absolutely horrible. Silence is not bad. Especially when dealing with a victim who has been traumatized. Silence is not bad. A lot of times people have to think about their responses and as lawyers especially those who go into trial, we don't like that. We're like question, answer, question, answer. That's how it should work. Question, answer. Time yourself sometimes. How long when you're having a conversation with someone can you handle before you re-ask the question? "Did they hear me?" They probably heard you. They're just formulating how they want to answer, or especially with trauma victims, getting the guts to answer. And also, they're making lot of decisions. "Do I trust you to listen to my answer? Do I trust you to do anything with my answer?" And they're weighing the pros and cons about whether or not they should answer. So let the silence be there for a little while.

Be yourself. I see this with law students a lot, as soon as you enter the law school realm, you got to be like lawyers. Everything's different, you have "lawyer voice," you start making lawyer jokes which are the worst. You know all your spouses and friends around you were like "shut up! That's not funny!" You have to be yourself because victims will see through that. They'll see through if you don't have that comfort level with who you are, and that goes to the trust. Make sure they're comfortable, but also make sure they know that you're the lawyer. You're not their friend. You can be friendly, but you're not their friend because they're there for you for a reason. They're not there to make friends. They're there for an outcome. Whether it's for civil outcome or criminal outcome, and they need to trust that when they go into that courtroom you're not thinking like their friend you're thinking like their lawyer. And sometimes that means not being super friendly. But you still have to make them comfortable.

Do not begin by asking "what happened?" Don't jump right into it. It might even be your second appointment with them before they'll even tell you. Just get to know them. "How are you?" "What was your day like today?" "How'd you..." little stupid stuff they teach in client counseling in law school. "Did you find the place okay?" Just kind of get them talking a little bit. Start by asking them how they're doing, and that's super important psychologically to the victim because often the people that are there to meet you, people haven't cared about how they were doing. Because if they cared

about how they were doing they wouldn't have harassed them, they wouldn't have assaulted them, they wouldn't have done these things. So the simple question of "how are you doing today?" can start a relationship off really well.

Explain your expectations. You have to do that too. You can't keep them guessing, you have to tell them. Especially with Title VII and time lines, there might be times you don't have the luxury to meet with them three times before you make them tell you everything that happened to them bad. But you have to tell them, "I'm always going to be honest with you. I need you to be always be honest with me. You're not going to always like what I have to say but you can guarantee that it's going to be honest." Depending on time constraints, this is the part where if you can give them a sense of control. "I'm not going to ask you to talk about this today if you're not ready." "You can come back." "We can reschedule another time." That finally gives them a sense of control in what is happening in their story.

And then when you do finally get them to talk, don't interrupt. I see these young officers on the street, experienced investigators, lawyers - when I sit in on other lawyer interviews the victim starts talking and they're like "oh you said 9 o'clock" so how did you know it was 9. Shut up. Let them tell their story, listen. If you're someone who has to take notes because your memory is bad or isn't great, take a few notes, but go back and ask the details afterwards. Let them tell their narrative. Because what happens is, if you start interrupting, they forget something they were going to tell you. You start going down a path that might not even be relevant because you haven't heard the whole story. So just let them do that. Don't ever say, "I know how you feel," because you don't. That's incredibly offensive. You don't know how I feel, okay? Doesn't mean that I don't empathize with you; it doesn't mean I don't think what happened to you is horrible. But I don't know how you feel. We all handle things differently. We all have different reactions. You can say things like, "I'm sorry this happened to you. I understand why you feel that way."

Don't touch the victim beyond a handshake. I'm a hugger. By nature, I'm a hugger. I've never hugged a victim on the way in, and I've had a lot of victim hugs after the trial or after a sentencing, but this is all about their mental ability. The last thing you're going to want to do is invade their space. Handshake. It's also professional. And that's part of the trauma centered approach. Don't ask "why" questions. We need to know the why.

Because in criminal law, what do they tell us all the time? Motive is not required - baloney. You've got to explain the whys. So the best way I think to handle it with your clients and with your victims is, "I've got to ask you

2019]

WORKING WITH VICTIMS

201

some questions. I need you to know that I'm not asking these because I'm judging anything. I'm asking these because the defense counsel or the counsel on the other side is going to ask you these questions. So I need you to start thinking about these answers. And I need to know the answers." Then it's not you questioning, "why did you go here? Why did you do that?" You know, because automatically that's victim blaming. But you do, as the professional, not as their friend, have to have those answers. You have to have the why - why did you think it was safe to go with this person? Why did you go back to work after your boss touched your ass? What was that reason? Because that's cross examination fodder for days and if you don't know the answer, you don't know how to come back come redirect. You don't know how to say, "they asked you why. Let's talk about that. How were you feeling at the time?" "Well, a friend of mine had gone forward. She got fired." The defense, the other side's not going to want to know the why. They're just going to know, "oh yeah, because they went back after this awful thing happened so they can argue to the judge or the jury, it can't have been that bad, if they went back?"

But if you don't know the answer you can't come back on direct and say "can you explain? They didn't give you the chance to explain, please explain that." "Well, I had seen two of my co-workers fired for the same reason so I needed the job and went back." Explain the steps. Don't leave anything to question because again it's about control. They don't have control in the situation to what happened to them. You need to give them a sense of control through the process. And just knowing the next step can be that way; knowing the next step can be a sense of control. I give the victim homework sometimes. Start a journal. Start talking, thinking about things you know you want to talk about. If there's actual things I need to collect, any witnesses, that type of thing. Again, it's not about you being lazy, it's about giving the victim a sense of control. If you feel your victims out and if there's no witnesses, if there's nothing, you don't start saying "you must come up with witnesses." You have to feel them out a little bit. But ask them to write it down, almost like you're a teacher. It's their assignment, and it gives them something to do.

Especially make sure they have your contact information, and more than ever your email. And the way I explain emails to clients, especially younger females, is that there are going to be times at 2:00 A.M. in the morning, and you think of something you want to ask me or talk to me about. You're not going to pick up a phone and call because people don't do that anymore. I'm not giving you my personal number so you can text me; I'm not going to say that either. Email at 2:00 in the morning when it's in your mind, when it's in your concern. Because the most we do as people to ourselves is

keep things in our brain. The moment we verbalize it, the moment we get it out, ask the question, it's amazing, almost physically your brain feels lighter, so tell them at 2:00 in the morning, 4:00 in the morning when you're up and you can't sleep because of all this and you have a question, get it out! Write it! First thing in the morning I'll get to work and see it.

Alright, and here's where the circle comes in. This is where your story begins again after all of this. This is what vicarious trauma is. Doing public service work is not just hard work because the outcomes aren't grand, it's hard because it affects us. I never want to scare anybody away from public service work or helping others, but you have to know going in that when you listen to other people's trauma, for extended periods of time, over and over again, you start to feel it and it affects you. And we are very quick to say "no, no, she was the one who went through this, it's not about me. I'm good. I'm fine. I'm one of those people who somehow can compartmentalize what I hear at work and what I do." Also, baloney. It's not going to happen the first year of your career, it's not going to happen the second year of your career, maybe your third, maybe your fourth. I'm in year twenty-two. You're going to have listened to the worst of the worst over and over again, and you're going to have wanted to have cried with these victims and you're going to have wanted to reach across the courtroom and beat the living crap out of the guy that just got found not guilty for abusing his wife to the point where she was strangled and passed out and lost brain function.

You're also going to have to deal with the fact that you're re-traumatizing these folks. It is your fault that they are now in front of strangers that they have never met and telling the most intimate thing that happened to them, that they have an attorney who's out for blood and asking them questions and accusing them of all different kinds of things. Like that little girl that I mentioned who hates me, I get it. I represent her traumatization to her. That's why you can't out someone's trauma, but be aware of what is available. For instance, in Gloucester, and I think other jurisdictions are doing this now, if you are a sexual assault victim, you can report it to the police, but you don't have to file the report. You don't have to agree to go forward. You can go get your forensic nurse exam, you can go get all of these things, so two years later if you decide you're ready to proceed criminally, we at least have the forensic evidence. There are ways to help other people, but part of your job as a public servant in many ways is to re-traumatize and that will eventually affect you, and you have to remember that. And you have to figure out ways to deal with that.